

Message

From: Ex. 6 Personal Privacy (PP)
Sent: 5/14/2019 10:02:24 PM
To: Langman, Michael [langman.michael@epa.gov]
CC: DLogan@idem.in.gov
Subject: PROPOSED Part 70 Operating Permit T147-39554-00065
Attachments: ATT00001.txt; Riverview Energy Draft Permit T147-39554-00065 Comments.pdf; NSPS Subpart NNN final preamble def of Product [55 FR 26936]_highlighted.pdf; NSPS Subpart RRR final preamble def of Product [58 FR 45953]_highlighted.pdf; Riverview Material Balance Info IDEM VFC Doc 82602858.pdf

Re: PROPOSED Part 70 Operating Permit T147-39554-00065

Riverview Energy Corporation

Indiana Department of Environmental Management (IDEM) has submitted Proposed Part 70 Operating Permit T147-39554-00065 to U.S. EPA for review prior to issuing a final permit. During the public comment period I submitted comments (copy attached), as an interested citizen, seeking clarifications and corrections pertaining to the DRAFT Permit. I greatly appreciate IDEM revising the permit consistent with many of my comments; however, I believe the PROPOSED Permit incorrectly continues to include 40 CFR 60, Subparts NNN and RRR and ask U.S. EPA to further review applicability and request removal of those requirements during its 45-day review period.

Based upon information in the Technical Support Document (TSD), the Addendum to the Technical Support Document (ATSD), and its response to public comments, IDEM has included NSPS Subparts NNN and RRR in the PROPOSED Permit because it believes the Riverview Energy Corporation source will produce a product that is a chemical listed in 60.667 and 60.707. See IDEM Response to Mr. (b)(6) Comment 15 in the ATSD (page 43 of 336).

While IDEM's determination may seem appropriate on the surface, I believe the determination has not fully considered what is meant, for the purposes of Subparts NNN and RRR, to produce a product (including by-products, co-products, and intermediates). The preambles accompanying publication of Subpart NNN and RRR final rules in the Federal Register specifically addressed what U.S. EPA means with respect to determining whether a chemical is considered a product. For your consideration, I have attached two files with the relevant preamble excerpts highlighting the "product" discussion.

First, the preamble for Subpart NNN states "Therefore, EPA considers the word product to also represent by-products, co-products, and intermediates." So, it is clear, as set forth in the definition of "product" in 60.661 and 60.701 that by-products, co-products, and intermediates are products. IDEM seems to have stopped the applicability determination at that level.

However, the preamble goes further and addresses whether a produced chemical is produced as a product (whether product, by-product, co-product, or intermediate) within the underlying meaning of the rule. This is a necessary additional consideration. EPA discusses that determination in the rule preamble. For Subpart NNN, EPA discusses the meaning of “product” at 55 FR 26936 June 29, 1990 [emphasis added]:

The main factor in determining if a listed chemical is **produced as a product** is the use of the chemical [sic] after the process unit. The EPA considers either of the following downstream uses as indicative of the production of a listed chemical as a product: (1) Produced for sale as that listed chemical, or (2) used in another process where that listed chemical is needed. However, **if a listed chemical is only part of a mixed stream exiting a process unit and cannot be sold or used in another process as the listed chemical, then that chemical is not considered to be produced as a product.**

The EPA has decided that for the purposes of these standards it is more appropriate to determine applicability according to whether a listed chemical is intended to be produced as a product instead of setting a minimum concentration level of a listed chemical as a means of defining what may constitute production as a “product”. It is not feasible to set any one concentration limit for listed chemicals below which the chemical is always an impurity or waste. It is not feasible because the necessary concentration or purity for a listed chemical to be considered a product can vary from site to site. For example, a chemical that is produced as 90 percent pure from one process may only be 80 percent pure to be considered as a product for another process. Therefore, resource requirements for establishing different concentration limits for all of the processes covered by the standards would be prohibitive because of the diversity and complexity of the SOCMI.

For Subpart RRR, similar discussion occurs at 58 FR 45953-45954 with the meaning consistent with the meaning for Subpart NNN.

The record for the PROPOSED Permit documents the proposed source will produce naphtha and diesel products (along with sulfur, ammonia, VGO and residue). It does not appear to support that the source will produce a chemical listed in 60.667 and 60.707 as a “product” consistent with the discussion of “product” in the Subpart NNN and RRR rule preambles. IDEM’s Virtual File Cabinet record, document ID 82602858 (excerpt attached), includes material balance data supplied to IDEM by the source’s engineers (KBR). That data shows the chemical composition of the naphtha and diesel chemical streams (and the other streams) to be produced by the source. I believe the source will not produce any product within the context discussed in the Subpart NNN and RRR rule preambles; therefore, if that is correct, Subpart NNN and RRR should be removed from the Proposed Permit prior to final issue.

When issued, the FINAL Permit will be a legal document and every effort should be made prior to issuance to ensure it is legally accurate, complete and enforceable. Accordingly, including non-applicable requirements would be inconsistent with the Part 70 permitting requirements and would be a confusing precedent for others considering Subpart NNN and RRR applicability.

I ask U.S. EPA to specifically consider, during its review, the correctness of including Subparts NNN and RRR in the PROPOSED Permit. Unless Subparts NNN and RRR are determined to be applicable requirements, U.S. EPA should request IDEM remove the requirements before issuing a final permit. An applicability determination seems to depend upon analysis of factual information pertaining to the proposed source and regulatory intent

presented in the preamble background of Subpart NNN and RRR rules. Accordingly, during its review I ask U.S. EPA explain its applicability conclusion for Subparts NNN and RRR, specifically addressing consideration of the preamble text discussions, and provide it to IDEM so that it is readily available to all interested persons who may look to the FINAL Permit for precedent.

Thank you for considering this matter. I look forward to hearing the results of your considerations. If you have any questions regarding this matter, please contact me.

Sincerely,

(b)(6)

Email: **Ex. 6 Personal Privacy (PP)**

Ex. 6 Personal Privacy (PP) (home)